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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/820,371	04/08/2004	Thomas V. Wilder	DAREDEV.63DVICI	7630
20995	7590	05/30/2006	EXAMINER	
KNOBBE MARTENS OLSON & BEAR LLP 2040 MAIN STREET FOURTEENTH FLOOR IRVINE, CA 92614			MORAN, KATHERINE M	
			ART UNIT	PAPER NUMBER
			3765	

DATE MAILED: 05/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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<b>Office Action Summary</b>	<b>Application No.</b> 10/820,371	<b>Applicant(s)</b> WILDER ET AL.	
	<b>Examiner</b> Katherine M. Moran	<b>Art Unit</b> 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 2 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 22 March 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☒ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 2-5, 8 and 17-31 is/are pending in the application.
- 4a) Of the above claim(s) 22 and 26-28 is/are withdrawn from consideration.
- 5) ☒ Claim(s) 2-5, 8, 17-21, 23-25 and 29-31 is/are allowed.
- 6) ☐ Claim(s) \_\_\_\_\_ is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 17 June 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

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## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 3/22/06 has been entered.

### ***Response to Amendment***

Applicant's amendment of 3/22/06 has been received and reviewed. Applicant amended claims 2-4, 8, and 17-19 and submitted new claims 21-31. Claims 2-5, 8, and 17-31 are pending, with claims 22 and 26-28 withdrawn as discussed below.

### ***Election/Restrictions***

Newly submitted claims 22 and 26-28 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: claims 22 and 26-28 recite a patentably distinct embodiment drawn to the originally presented first glove in combination with a second glove having a different structure from the first glove.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 22 and 26-28 are withdrawn from

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consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

***Response to Arguments***

Applicant's arguments have been considered. In response the Examiner's contention in the advisory action of 3/15/06 that claim 24, if entered, would constitute new matter, Applicant has pointed to portions of the specification as well as the drawings which support the recitation of claim 24.

***Allowable Subject Matter***

This application is in condition for allowance except for the following formal matters:

***Interference***

Claims 2-5, 8, 17-21, 23-25, and 29-31 are allowable. The only question to be resolved prior to allowance is the question of priority of inventorship, which is properly resolved under interference proceedings. Under MPEP 2304.04(a) (October 2005), applicant is invited to suggest an interference under 37 CFR 41.202(a) in order to have applicant's view as to how the interference should be declared on record. Guidance for current interference practice may be found in MPEP Chapter 2300 (October 2005) and in Federal Register Vol.69 No.155, August 12, 2004 beginning 49990-49996. See also 37 CFR Part 41.

Claim 17 does not appear patentably distinct from U.S. Patent 6,543,057 claim 1. Thus, interference proceedings appear appropriate in view of Cote (U.S. 4,930,162).

Prosecution on the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213. Prosecution has been closed in order to expedite resolution of the question of priority of invention. Generally, under *ex parte Quayle* practice, the addition of claims is no longer entertained. However, it is noted Applicant originally copied claim 1 from the 6,543,057 patent in order to provoke an interference. Should applicant desire to re-submit a directly copied claim with his response to this office action, such will be favorably entertained by the examiner.

A shortened statutory period for reply to this action is set to expire **TWO MONTHS** from the mailing date of this letter.

***Conclusion***

Any inquiry concerning this communication or earlier communications should be directed to Primary Examiner Katherine Moran at (571) 272-4990. The examiner can be reached on Monday-Thursday from 8:30 am to 6:00 pm, and alternating Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John Calvert, may be reached at (571) 272-4983. The official and after final fax number for the organization where this application is assigned is (571) 273-8300. General information regarding this application may be obtained by contacting the Group Receptionist at (571) 272-3700.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Kmm

May 24, 2006



Katherine Moran

Primary Examiner, AU 3765